Held: The land retained by the original vendee is first liable for the balance of the vendor's lien. The mortgagee is not bound to inquire for evidence of secret equities between the other parties, and the recordation of the vendor's lien did not impose this duty upon him.

BARLEY AND OTHERS v. BYRD AND OTHERS.—Decided at Richmond, November 18, 1897.—*Keith*, P:

1. SUIT TO ESTABLISH LOST DEED—*Evidence—Memorandum in handwriting of grantee's attorney.* In a suit to set up a lost deed made a century ago, a memorandum in the handwriting of the grantee's attorney, found amongst the papers of the grantee, stating that the lands had been granted to the grantor, and by him and wife conveyed with general warranty to the grantee, is not in itself evidence of the execution of such deed; nor is such memorandum admissible as a declaration against interest in a suit where no relief is sought against the attorney, or his representatives; nor is it admissible as a part of the *res gestae*, as the transaction to be explained or proved is the execution of the deed, and the memorandum neither accompanies nor explains the fact in issue.

2. EVIDENCE—*Deed not properly authenticated or recorded—Copy of a copy.* Where an original deed conveying lands lying wholly in Virginia is admitted to record outside of the State, upon proof and authentication wholly insufficient to have admitted it to record in Virginia, and a copy thereof is subsequently admitted to record in a county in Virginia where a part of the lands conveyed lie, and the absence of the original deed is not accounted for, a copy from the copy so admitted to record is not admissible in evidence to prove the recitals in said deed.

3. SUIT TO ESTABLISH LOST DEED—*To whom land charged for taxes—Copies from Auditor's Office—Intermediate conveyance unaccompanied by possession—Case at bar.* In a suit to establish a deed alleged to have been made a century ago, and lost, neither the certificate of the Auditor showing that the lands were charged to the grantee for a great number of years after the date of the alleged deed, nor any number of intermediate conveyances, however numerous, from those claiming under the alleged grantee, unaccompanied by possession or other circumstance, can serve to establish the execution of such deed. In the case at bar the evidence of possession in appellants amounts to nothing, so far as it affects the rights of other parties to the controversy.

4. SUIT TO ESTABLISH LOST DEED—*Proof of former existence.* Courts of equity, in exercising their jurisdiction to set up of lost instrument which is to constitute a muniment of title, require strong and conclusive proof of its former existence, its loss, and its contents.

WALKER & OTHERS v. WEBSTER & OTHERS.—Decided at Richmond, December, 2, 1897.—*Riely*, J. *Keith*, P., dissents:

1. WILLS—*Construction—Case at bar—Per stirpes or per capita.* A will contains the following residuary clause, "All the rest and residue of my estate, real, personal, and mixed, I desire shall go to and be divided in equal parts among those who would be my heirs at law under the statute of descents and distributions in Virginia in case I had died intestate."

Held: The heirs take *per capita*, and not *per stirpes.*